

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

JUAN HUMBERTO CASTILLO-ALVAREZ,

Civil No. 14-542 (JRT/JSM)

Petitioner,

v.

**MEMORANDUM OPINION
AND ORDER**

MICHELLE SMITH,

Respondent.

Juan Humberto Castillo-Alvarez, No. 235036, Minnesota Correctional Facility Stillwater, 970 Pickett Street, Bayport, MN 55003, *pro se*.

Matthew Frank and James B. Early, **MINNESOTA ATTORNEY GENERAL'S OFFICE**, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101, for respondent.

Petitioner Juan Humberto Castillo-Alvarez ("Castillo-Alvarez") commenced this action by filing a habeas corpus petition challenging his state court conviction for second-degree murder and kidnapping. United States Magistrate Judge Janie S. Mayeron issued a Report and Recommendation ("R&R"), recommending that the Court deny Castillo-Alvarez's habeas petition and dismiss the case with prejudice. (R&R, Nov. 19, 2014, Docket No. 18.) Castillo-Alvarez objected to the R&R, and the Court conducted a *de novo* review of the matter. The Court ultimately overruled Castillo-Alvarez's objections, adopted the R&R, dismissed the matter with prejudice, and did not grant a Certificate of Appealability ("COA"). (Mem. Op. & Order Adopting R&R ("Order Adopting R&R"), Oct. 23, 2015, Docket No. 21.)

Castillo-Alvarez has now applied for leave to proceed *in forma pauperis* (“IFP”) on appeal. (Appl. to Proceed IFP on Appeal, Dec. 7, 2015, Docket No. 26.) The IFP application contradicts itself in one important respect: Although Castillo-Alvarez asserts that he has received no income of any kind over the past twelve months, the financial certificate completed by an official at the prison where he is confined attests that Castillo-Alvarez received an average of \$1,111.30 in deposits each month to his prison trust account over the past six months – an extraordinary amount for a prisoner. (*See id.* at 2, 6.) That said, the financial certificate also indicates that Castillo-Alvarez has only \$5.31 in spending money available to him at this time, which is far less than is needed to pay the appellate filing fee for this action. (*Id.* at 6.) The Court therefore finds that Castillo-Alvarez qualifies financially for IFP status. Moreover, although the Court is satisfied that this action was properly dismissed, it cannot say that the issues raised by Castillo-Alvarez’s appeal are frivolous as the Supreme Court has defined that term. Accordingly, the Court will grant Castillo-Alvarez’s application for IFP status on appeal.

Castillo-Alvarez has also filed a motion for COA. (Mot. for COA, Nov. 27, 2015, Docket No. 25.) It appears that this motion was intended for the Eighth Circuit Court of Appeals, as it is addressed to that court. (*Id.* at 1.) In any event, this Court has already declined to issue Castillo-Alvarez a COA, (Order Adopting R&R at 19-20), and nothing in Castillo-Alvarez’s recent motion convinces the Court that it erred in that determination. The Court will therefore deny the motion without prejudice; Castillo-Alvarez may still renew his request for a COA before the Eighth Circuit. *See* Fed. R. App. P. 22(b)(1).

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Castillo-Alvarez's application to proceed *in forma pauperis* on appeal [Docket No. 26] is **GRANTED**.
2. Castillo-Alvarez's motion for certificate of appealability [Docket No. 25] is **DENIED without prejudice**.

DATED: February 5, 2016
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
Chief Judge
United States District Court